



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

# GENERAL INFORMATION PACKET UNITED STATES MAGISTRATE JUDGES

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## THE JURISDICTION OF MAGISTRATE JUDGES

The authority that a magistrate judge exercises is the jurisdiction of the district court itself, delegated to the magistrate judge by the district judges of the court under governing statutory authority and local rules of court. The key provisions governing the authority of magistrate judges are contained in 28 U.S.C. § 636 and are included as [Appendix G](#). Other statutory grants of authority to magistrate judges appear throughout the United States Code.

Generally, a magistrate judge's duties fall into the following categories.

### INITIAL PROCEEDINGS IN CRIMINAL CASES

In criminal proceedings a magistrate judge may perform the following:

1. Accept criminal complaints.
2. Issue arrest warrants and summonses.
3. Issue search warrants.
4. Conduct initial appearance proceedings and detention hearings for criminal defendants, informing them of the charges against them and of their rights.
5. Set bail or other conditions of release or detention.
6. Appoint attorneys for defendants who are unable to afford or obtain counsel.
7. Hold preliminary examinations, or "probable cause" hearings.
8. Administer oaths and take bail, acknowledgments, affidavits and depositions.
9. Conduct extradition proceedings.

## REFERENCES OF PRETRIAL MATTERS FROM DISTRICT JUDGES

District judges may delegate a wide variety of duties to magistrate judges that will assist the district judges in expediting the disposition of civil and criminal cases, including the following:

1. Hearing and determining any non-case-dispositive pretrial matter, such as procedural and discovery motions.
2. Hearing case-dispositive motions (such as motions for summary judgment or dismissal, or for suppression of evidence), and submitting findings and a recommended disposition of such motions to a district judge.
3. Reviewing and recommending disposition of social security appeals and prisoner litigation and conducting necessary evidentiary hearings in prisoner cases.
4. Conducting calendar calls, pretrial conferences and settlement conferences.
5. Serving as a special master in complex cases under rule 53 of the Federal Rules of Civil Procedure.

## TRIALS OF MISDEMEANORS

In all petty offense cases, including cases involving juveniles, a magistrate judge may conduct the trial and impose the sentence without the consent of the defendant. In all other misdemeanor cases, a magistrate judge may conduct the trial, either with or without a jury, and impose the sentence only upon the consent and waiver of the defendant made in writing or orally on the record.

A misdemeanor is any offense punishable by imprisonment for a term of one year or less. A magistrate judge who is designated to try misdemeanors has the power to invoke the federal probation laws.

## TRIALS OF CIVIL CASES

A full-time magistrate judge may conduct the trial, either with or without a jury, and dispose of any federal civil case with the consent of the litigants. In such cases, a magistrate judge sits in lieu of a district judge on stipulation of the parties and on reference from a district judge. In this capacity, a magistrate judge exercises case-dispositive authority and may order the entry of a final judgment. All district courts have designated their full-time magistrate judges to exercise civil consent authority.

28 U.S.C. § 636(c)(1) places restrictions on the ability of parties and courts to allow part-time magistrate judges to exercise consent authority in civil cases. Part-time magistrate judges may try civil cases only where (1) the parties specifically request in writing that a part-time magistrate judge exercise jurisdiction in the case, (2) the chief judge has determined that a full-time magistrate judge is not reasonably available, and (3) the judicial council of the circuit has implemented guidelines for the exercise of such jurisdiction.

## OTHER DUTIES

A magistrate judge may also be assigned any “additional duties as are not inconsistent with the Constitution and laws of the United States.” A magistrate judge may also be called upon to assist the district court in administrative areas.

The specific duties to be assigned to a magistrate judge are often set forth in standing orders or in the [local rules of the district court](#). A more detailed exposition of the authority of United States magistrate judges may be found in the *Inventory of United States Magistrate Judge Duties*, a publication of the Magistrate Judges Division of the Administrative Office of the United States Courts.

# Appendix G

## THE FEDERAL MAGISTRATES ACT OF 1968, AS AMENDED (codified provisions only)

### Provisions in Title 28, United States Code

#### CHAPTER 43 UNITED STATES MAGISTRATES

- § 631. Appointment and tenure.
- § 632. Character of service.
- § 633. Determination of number, locations, and salaries of magistrates.
- § 634. Compensation.
- § 635. Expenses.
- § 636. Jurisdiction, powers, and temporary assignment.
- § 637. Training.
- § 638. Dockets and forms; United States Code; seals.
- § 639. Definitions.

#### **§ 631. Appointment and tenure**

- (a) The judges of each United States district court and the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter. In the case of a magistrate judge appointed by the district court of the Virgin Islands, Guam, or the Northern Mariana Islands, this chapter shall apply as though the court appointing such a magistrate judge were a United States district court. Where there is more than one judge of a district court, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge. Where the conference deems it desirable, a magistrate may be designated to serve in one or more districts adjoining the district for which he is appointed. Such a designation shall be made by the concurrence of a

majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate in the adjoining district or districts.

- (b) No individual may be appointed or reappointed to serve as a magistrate under this chapter unless:
  - (1) He has been for at least five years a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, except that an individual who does not meet the bar membership requirements of this paragraph may be appointed and serve as a part-time magistrate if the appointing court or courts and the conference find that no qualified individual who is a member of the bar is available to serve at a specific location;
  - (2) He is determined by the appointing district court or courts to be competent to perform the duties of the office;
  - (3) In the case of an individual appointed to serve in a national park, he resides within the exterior boundaries of that park, or at some place reasonably adjacent thereto;
  - (4) He is not related by blood or marriage to a judge of the appointing court or courts at the time of his initial appointment; and
  - (5) He is selected pursuant to standards and procedures promulgated by the Judicial Conference of the United States. Such standards and procedures shall contain provision for public notice of all vacancies in magistrate positions and for the establishment by the district courts of merit selection panels, composed of residents of the individual judicial districts, to assist the courts in identifying and recommending persons who are best qualified to fill such positions.
- (c) A magistrate may hold no other civil or military office or employment under the United States: Provided, however, That, with the approval of the conference, a part-time referee in bankruptcy or a clerk or deputy clerk of a court of the United States may be appointed and serve as a part-time United States magistrate, but the conference shall fix the aggregate amount of compensation to be received for performing the duties of part-time magistrate and part-time referee in bankruptcy, clerk or deputy clerk: And provided further, That retired officers and retired enlisted personnel of the Regular and Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, members of the Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and members of the Army National Guard of the United States, the Air National Guard of the United States, and the Naval Militia and of the National Guard of a State, territory, or the District of Columbia, except the National Guard disbursing officers who are on a full-time salary basis, may be appointed and serve as United States magistrates.
- (d) Except as otherwise provided in sections 375 and 636(h) of this title, no individual may serve under this chapter after having attained the age of seventy years: Provided, however, That upon a majority vote of all the judges of the appointing court or courts, which is taken upon the magistrate's attaining age

seventy and upon each subsequent anniversary thereof, a magistrate who has attained the age of seventy years may continue to serve and may be reappointed under this chapter.

- (e) The appointment of any individual as a full-time magistrate shall be for a term of eight years, and the appointment of any individuals as a part-time magistrate shall be for a term of four years, except that the term of a full-time or part-time magistrate appointed under subsection (k) [should be subsection (j)] shall expire upon—
  - (1) the expiration of the absent magistrate's term,
  - (2) the reinstatement of the absent magistrate in regular service in office as a magistrate,
  - (3) the failure of the absent magistrate to make timely application under subsection (j) of this section for reinstatement in regular service in office as a magistrate after discharge or release from military service,
  - (4) the death or resignation of the absent magistrate, or
  - (5) the removal from office of the absent magistrate pursuant to subsection (i) of this section, whichever may first occur.
- (f) Upon the expiration of his term, a magistrate may, by a majority vote of the judges of the appointing district court or courts and with the approval of the judicial council of the circuit, continue to perform the duties of his office until his successor is appointed, or for 180 days after the date of the expiration of the magistrate's term, whichever is earlier.
- (g) Each individual appointed as a magistrate under this section shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of his office.
- (h) Each appointment made by a judge or judges of a district court shall be entered of record in such court, and notice of such appointment shall be given at once by the clerk of that court to the Director.
- (i) Removal of a magistrate during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but a magistrate's office shall be terminated if the conference determines that the services performed by his office are no longer needed. Removal shall be by the judges of the district court for the judicial district in which the magistrate serves; where there is more than one judge of a district court, removal shall not occur unless a majority of all the judges of such court concur in the order of removal; and when there is a tie vote of the judges of the district court on the question of the removal or retention in office of a magistrate, then removal shall be only by a concurrence of a majority of all the judges of the council. In the case of a magistrate appointed under the third sentence [should be fourth sentence] of subsection (a) of this section, removal shall not occur unless a majority of all the judges of the appointing district courts concur in the order of removal; and where there is a tie vote on the question of the removal or retention in office of a magistrate, then removal shall be only by a

concurrence of a majority of all the judges of the council or councils. Before any order or [should be “of”] removal shall be entered, a full specification of the charges shall be furnished to the magistrate, and he shall be accorded by the judge or judges of the removing court, courts, council, or councils an opportunity to be heard on the charges.

- (j) Upon the grant by the appropriate district court or courts of a leave of absence to a magistrate entitled to such relief under chapter 43 of title 38, such court or courts may proceed to appoint, in the manner specified in subsection (a) of this section, another magistrate, qualified for appointment and service under subsections (b), (c), and (d) of this section, who shall serve for the period specified in subsection (e) of this section.
- (k) A United States magistrate appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

### **§ 632. Character of service**

- (a) Full-time United States magistrates may not engage in the practice of law, and may not engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.
- (b) Part-time United States magistrates shall render such service as judicial officers as is required by law. While so serving they may engage in the practice of law, but may not serve as counsel in any criminal action in any court of the United States, nor act in any capacity that is, under such regulations as the conference may establish, inconsistent with the proper discharge of their office. Within such restrictions, they may engage in any other business, occupation, or employment which is not inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

### **§ 633. Determination of number, locations, and salaries of magistrates**

#### **(a) Surveys by the Director.—**

- (1) The Director shall, within one year immediately following the date of the enactment of the Federal Magistrates Act, make a careful survey of conditions in judicial districts to determine (A) the number of appointments of full-time magistrates and part-time magistrates required to be made under this chapter to provide for the expeditious and effective administration of justice, (B) the locations at which such officers shall serve, and (C) their respective salaries under section 634 of this title. Thereafter, the Director shall, from time to time, make such surveys, general or local, as the conference shall deem expedient.
- (2) In the course of any survey, the Director shall take into account local conditions in each judicial district, including the areas and the populations to be served, the transportation and communications facilities available, the amount and distribution of business of the type expected to arise before officers appointed under this chapter (including such matters as may be assigned under section 636(b) of this chapter), and any other material fac-



tors. The Director shall give consideration to suggestions from any interested parties, including district judges, United States commissioners or officers appointed under this chapter, United States attorneys, bar associations, and other parties having relevant experience or information.

- (3) The surveys shall be made with a view toward creating and maintaining a system of full-time United States magistrates. However, should the Director find, as a result of any such surveys, areas in which the employment of a full-time magistrate would not be feasible or desirable, he shall recommend the appointment of part-time United States magistrates in such numbers and at such locations as may be required to permit prompt and efficient issuance of process and to permit individuals charged with criminal offenses against the United States to be brought before a judicial officer of the United States promptly after arrest.

**(b) Determination by the conference.**

Upon the completion of the initial surveys required by subsection (a) of this section, the Director shall report to the district courts, the councils, and the conference his recommendations concerning the number of full-time magistrates and part-time magistrates, their respective locations, and the amount of their respective salaries under section 634 of this title. The district courts shall advise their respective councils, stating their recommendations and the reasons therefor; the councils shall advise the conference, stating their recommendations and the reasons therefor, and shall also report to the conference the recommendations of the district courts. The conference shall determine, in the light of the recommendations of the Director, the district courts, and the councils, the number of full-time United States magistrates and part-time United States magistrates, the locations at which they shall serve, and their respective salaries. Such determinations shall take effect in each judicial district at such time as the district court for such judicial district shall determine, but in no event later than one year after they are promulgated.

**(c) Changes in number, locations, and salaries.**

Except as otherwise provided in this chapter, the conference may, from time to time, in the light of the recommendations of the Director, the district courts, and the councils, change the number, locations, and salaries of full-time and part-time magistrates, as the expeditious administration of justice may require.

**§ 634. Compensation**

- (a) Officers appointed under this chapter shall receive, as full compensation for their services, salaries to be fixed by the conference pursuant to section 633, at rates for full-time United States magistrates up to an annual rate equal to 92 percent of the salary of a judge of the district court of the United States, as determined pursuant to section 135, and at rates for part-time magistrates of not less than an annual salary of \$100, nor more than one-half the maximum salary payable to a full-time magistrate. In fixing the amount of salary to be paid to any officer appointed under this chapter, consideration shall be given to the average number and the nature of matters that have arisen during the

immediately preceding period of five years, and that may be expected thereafter to arise, over which such officer would have jurisdiction and to such other factors as may be material. Disbursement of salaries shall be made by or pursuant to the order of the Director.

- (b) Except as provided by section 8344, title 5, relating to reductions of the salaries of reemployed annuitants under subchapter III of chapter 83 of such title and unless the office has been terminated as provided in this chapter, the salary of a full-time United States magistrate shall not be reduced, during the term in which he is serving, below the salary fixed for him at the beginning of that term.
- (c) All United States magistrates, effective upon their taking the oath or affirmation of office, and all necessary legal, clerical, and secretarial assistants employed in the offices of full-time United States magistrates shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of subchapter III (relating to civil service retirement) of chapter 83, chapter 87 (relating to Federal employees' group life insurance), and chapter 89 (relating to Federal employees' health benefits program) of title 5. Part-time magistrates shall not be excluded from coverage under these chapters solely for lack of a prearranged regular tour of duty. A legal assistant appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

### **§ 635. Expenses**

- (a) Full-time United States magistrates serving under this chapter shall be allowed their actual and necessary expenses incurred in the performance of their duties, including the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils of the circuits, considers necessary, and the compensation of necessary clerical and secretarial assistance. Such expenses and compensation shall be determined and paid by the Director under such regulations as the Director shall prescribe with the approval of the conference. The Administrator of General Services shall provide such magistrates with necessary courtroom, office space, furniture and facilities within United States courthouses or office buildings owned or occupied by departments or agencies of the United States, or should suitable courtroom and office space not be available within any such courthouse or office building, the Administrator of General Services, at the request of the Director, shall procure and pay for suitable courtroom and office space, furniture and facilities for such magistrate in another building, but only if such request has been approved as necessary by the judicial council of the appropriate circuit.
- (b) Under such regulations as the Director shall prescribe with the approval of the conference, the Director shall reimburse part-time magistrates for actual expenses necessarily incurred by them in the performance of their duties under this chapter. Such reimbursement may be made, at rates not exceeding those prescribed by such regulations, for expenses incurred by such part-time magistrates for clerical and secretarial assistance, stationery, telephone and other communications services, travel, and such other expenses as may be deter-

mined to be necessary for the proper performance of the duties of such officers: Provided, however, That no reimbursement shall be made for all or any portion of the expense incurred by such part-time magistrates for the procurement of office space.

### **§ 636. Jurisdiction, powers, and temporary assignment**

- (a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by his appointment—
- (1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;
  - (2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgments, affidavits, and depositions;
  - (3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;
  - (4) the power to enter a sentence for a petty offense; and
  - (5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.
- (b) (1) Notwithstanding any provision of law to the contrary—
- (A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.
  - (B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.
  - (C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo deter-

mination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

- (2) A judge may designate a magistrate to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.
  - (3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.
  - (4) Each district court shall establish rules pursuant to which the magistrates shall discharge their duties.
- (c) Notwithstanding any provision of law to the contrary—
- (1) Upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate may exercise such jurisdiction, if such magistrate meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.
  - (2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.
  - (3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate in the

same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

- (4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.
- (5) The magistrate shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.
- (d) The practice and procedure for the trial of cases before officers serving under this chapter shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

**(e) Contempt authority.—**

- (1) **In general.**—A United States magistrate judge serving under this chapter shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.
- (2) **Summary criminal contempt authority.**—A magistrate judge shall have the power to punish summarily by fine or imprisonment such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge's presence so as to obstruct the administration of justice. The order of contempt shall be issued under the Federal Rules of Criminal Procedure.
- (3) **Additional criminal contempt authority in civil consent and misdemeanor cases.**—In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the Federal Rules of Criminal Procedure.
- (4) **Civil contempt authority in civil consent and misdemeanor cases.**—In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

(5) **Criminal contempt penalties.**—The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

(6) **Certification of other contempts to the district court.**—Upon the commission of any such act—

(A) in any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or

(B) in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where—

(i) the act committed in the magistrate judge's presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection,

(ii) the act that constitutes a criminal contempt occurs outside the presence of the magistrate judge, or

(iii) the act constitutes a civil contempt,

the magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

(7) **Appeals of magistrate judge contempt orders.**—The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection (c) of this section. The appeal of any other order of contempt issued under this section shall be made to the district court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate may be temporarily assigned to perform any of the duties specified in subsection (a), (b), or (c) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is

authorized to perform. A magistrate so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

- (g) A United States magistrate may perform the verification function required by section 4107 of title 18, United States Code. A magistrate may be assigned by a judge of any United States district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate assigned such functions shall have no authority to perform any other function within the territory of a foreign country.
- (h) A United States magistrate who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate, shall not apply to the recall of a retired magistrate under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate under this subsection or section 375 of this title unless such retired magistrate met such requirement upon appointment or reappointment as a magistrate under section 361 [should be section 631].

### **§ 637. Training**

The Federal Judicial Center shall conduct periodic training programs and seminars for both full-time and part-time United States magistrates, including an introductory training program for new magistrates, to be held within one year after initial appointment.

### **§ 638. Dockets and forms; United States Code; seals**

- (a) The Director shall furnish to United States magistrates adequate docket books and forms prescribed by the Director. The Director shall also furnish to each such officer a copy of the current edition of the United States Code.
- (b) All property furnished to any such officer shall remain the property of the United States and, upon the termination of his term of office, shall be transmitted to his successor in office or otherwise disposed of as the Director orders.
- (c) The Director shall furnish to each United States magistrate appointed under this chapter an official impression seal in a form prescribed by the conference. Each such officer shall affix his seal to every jurat or certificate of his official acts without fee.

## **§ 639. Definitions**

As used in this chapter—

- (1) “Conference” shall mean the Judicial Conference of the United States;
- (2) “Council” shall mean the Judicial Council of the Circuit;
- (3) “Director” shall mean the Director of the Administrative Office of the United States Courts;
- (4) “Full-time magistrate” shall mean a full-time United States magistrate;
- (5) “Part-time magistrate” shall mean a part-time United States magistrate; and
- (6) “United States magistrate” and “magistrate” shall mean both full-time and part-time United States magistrates.

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## **Provisions in Title 18, United States Code**

### **CHAPTER 219**

#### **TRIAL BY UNITED STATES MAGISTRATES**

§ 3401. Misdemeanors; application of probation laws.

§ 3402. Rules of procedure, practice and appeal.

#### **§ 3401. Misdemeanors; application of probation laws**

- (a) When specially designated to exercise such jurisdiction by the district court or courts he serves, any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district
- (b) Any person charged with a misdemeanor, other than a petty offense may elect, however, to be tried before a district judge for the district in which the offense was committed. The magistrate judge shall carefully explain to the defendant that he has a right to trial, judgment, and sentencing by a district judge and that he may have a right to trial by jury before a district judge or magistrate judge. The magistrate judge may not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the magistrate judge and expressly and specifically waives trial, judgment, and sentencing by a district judge. Any such consent and waiver shall be made in writing or orally on the record.
- (c) A magistrate who exercises trial jurisdiction under this section, and before whom a person is convicted or pleads either guilty or nolo contendere, may, with the approval of a judge of the district court, direct the probation service of the court to conduct a presentence investigation on that person and render a report to the magistrate prior to the imposition of sentence.
- (d) The probation laws shall be applicable to persons tried by a magistrate under this section, and such officer shall have power to grant probation and to



revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge.

- (e) Proceedings before United States magistrates under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. For purposes of appeal a copy of the record of such proceedings shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.
- (f) The district court may order that proceedings in any misdemeanor case be conducted before a district judge rather than a United States magistrate upon the court's own motion or, for good cause shown, upon petition by the attorney for the Government. Such petition should note the novelty, importance, or complexity of the case, or other pertinent factors, and be filed in accordance with regulations promulgated by the Attorney General.
- (g) The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title. The magistrate judge may, in the case of any misdemeanor, other than a petty offense, involving a juvenile in which consent to trial before a magistrate judge has been filed under subsection (b), exercise all powers granted to the district court under chapter 403 of this title. For purposes of this subsection, proceedings under chapter 403 of this title may be instituted against a juvenile by a violation notice or complaint, except that no such case may proceed unless the certification referred to in section 5032 of this title has been filed in open court at the arraignment.
- (h) The magistrate judge shall have power to modify, revoke, or terminate supervised release of any person sentenced to a term of supervised release by a magistrate judge.
- (i) A district judge may designate a magistrate judge to conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for such modification, revocation, or termination by the judge, including, in the case of revocation, a recommended disposition under section 3583(e) of this title. The magistrate judge shall file his or her proposed findings and recommendations.

#### **§ 3402. Rules of procedure, practice and appeal**

In all cases of conviction by a United States magistrate an appeal of right shall lie from the judgment of the magistrate to a judge of the district court of the district in which the offense was committed.

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

# LOCAL MAGISTRATE JUDGE RULES

EFFECTIVE *OCTOBER 1, 2002*

WITH AMENDMENTS THROUGH *JANUARY 3, 2006*

**[[TO GO TO DESIRED RULE, CLICK ON RULE NUMBER IN TABLE OF CONTENTS](#)]**

## SUMMARY OF JANUARY 2006 AMENDMENTS

**Rule 4:** Deleted automatic referral of Internal Revenue Service summonses; social security act cases; ERISA trustee collections; §1983 prisoner suits; Miller Act cases; cost bill reviews; and collection actions by the United States.

**Rule 6:** The title and of the rule and paragraph (a)(1) amended to implement new FED. R. CRIM. P. 59 making this rule applicable to review by the assigned district judge in both dispositive and non-dispositive matters.

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## **Rule 1. Scope, Title and Effective Date**

- (a) **Title and Citation.** These are known as the Local Magistrate Judge Rules of the United States District Court for the District of Alaska, and may be cited as “D.Ak.LMR \_\_\_\_.”
- (b) **Effective Date.** These rules become effective October 1, 2002.
- (c) **Applicability.** These rules apply to all actions and proceedings commenced on or after the effective day and, except to the extent that the rights of a party may be prejudiced thereby, to all open actions and proceedings on the effective date.
- (d) **Conflicts.** In the event of a conflict between these rules and the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure will prevail.

## **Rule 2. Authority of Magistrate Judges**

A Magistrate Judge appointed by this court is, with respect to matters assigned, authorized to exercise all powers and perform all duties conferred expressly or by implication upon magistrate judges by, and in accordance with, procedures now or hereafter set provided in the United States Code, rules promulgated by the Supreme Court, and the rules of this Court.

### Related Provisions:

28 U.S.C. § 636	Jurisdiction, powers, and temporary assignments
F.R.Civ.P. 72	Magistrate Judges; Pre-trial Orders
F.R.Civ.P. 73	Magistrate Judges; Trial by Consent and Appeal Option
D.Ak.LMR 3	Criminal Matters Routinely Assigned to Magistrate Judges
D.Ak.LMR 4	Civil Matters Routinely Assigned to Magistrate Judges
D.Ak. LMR 7	Trial by Consent

## **Rule 3. Criminal Matters Routinely Assigned to Magistrate Judges**

- (a) **In General.** Unless otherwise provided by order of a district judge, all criminal matters designated for hearing before magistrate judges by statute or the Federal Rules of Criminal Procedure will be assigned to magistrate judges, including but not limited to:
- (1) issuance of arrest warrants;
  - (2) issuance of search warrants;
  - (3) initial appearances;
  - (4) preliminary examinations;
  - (5) removal hearings;
  - (6) Class B and Class C misdemeanor cases, and infractions in their entirety; and
  - (7) Class A misdemeanor cases in their entirety upon consent of the defendant.
- (b) **Other Matters.** Unless otherwise provided by order of a district judge, in addition to the matters provided in subsection (a), the following criminal matters will be assigned to magistrate judges:
- (1) extradition proceedings under 18 U.S.C. § 3184;
  - (2) return of indictments;
  - (3) warrants and summonses upon indictment or information;
  - (4) arraignments;
  - (5) waivers of indictment;
  - (6) pretrial release and detention hearings;
  - (7) non-dispositive pretrial motions within the scope of 28 U.S.C. § 636 (b)(1)(A), except motions related to the scheduling of trials not otherwise assigned to a magistrate judge; and
  - (8) dispositive pre-trial motions within the scope of 28 U.S.C. § 636 (b)(1)(B) for reports and recommendations.

Related Provisions:

18 U.S.C. § 19	Petty Offenses
18 U.S.C. §§ 3141–3156	Release and Detention Pending Judicial Proceedings
18 U.S.C. § 3184	Fugitives from foreign country to United States
18 U.S.C. §§ 3401, 3402	Trial by United States Magistrate Judges
28 U.S.C. § 636	Jurisdiction, powers, and temporary assignments
F.R.Cr.P. 4	Arrest Warrant or Summons Upon Complaint
F.R.Cr.P. 5	Initial Appearance Before the Magistrate Judge
F.R.Cr.P. 5.1	Preliminary Examination
F.R.Cr.P. 7	The Indictment and the Information
F.R.Cr.P. 10	Arraignment
F.R.Cr.P. 40	Commitment to Another District
F.R.Cr.P. 41	Search and Seizure
F.R.Cr.P. 46	Release From Custody
F.R.Cr.P. 58	Procedure for Misdemeanors and Other Petty Offenses
F.R.Cr.P. 59	Matters Before a Magistrate Judge
D.Ak.LMR 2	Authority of Magistrate Judges
D.Ak.LMR 6	Objections to Matters under 28 U.S.C. § 636(b)(1) in Criminal Matters

**Rule 4. Civil Matters Routinely Assigned to Magistrate Judges**

Unless otherwise provided by order of a district judge, the following civil matters will be assigned to magistrate judges for disposition or findings and recommendations as appropriate:

- (1) administrative inspection warrants;
- (2) Matters relating to nonpayment of seaman's wages;
- (3) *Habeas Corpus* petitions initiated under 28 U.S.C. § 2254;
- (4) Motions Attacking Sentence under 28 U.S.C. § 2255;
- (5) preferred ship mortgage foreclosures;
- (6) matters relating to the arrest, seizure, or release of vessels and other property under the Supplemental Rules for Certain Admiralty and Maritime Claims; and
- (7) matters relating to the enforcement of administrative subpoenas.

Related Provisions:

26 U.S.C. § 7604	Enforcement of Summons
28 U.S.C. § 636	Jurisdiction, powers and temporary assignment
28 U.S.C. § 2254	State custody; remedies in Federal courts
28 U.S.C. § 2255	Federal custody; remedies on motion attacking sentence
F.R.Civ.P. 54	Judgments; Costs
F.R.Civ.P. 72	Magistrate Judges; Pre-trial Orders
F.R.Civ.P. 73	Magistrate Judges; Trial by Consent and Appeal Option
Admiralty Rule C	Actions in Rem; Special Proceedings
Admiralty Rule E	Actions in Rem and Quasi in Rem; General Provisions
D.Ak.LMR 2	Authority of Magistrate Judges

## **Rule 5. Review of Magistrate Judge Civil Pretrial Orders.**

### **(a) Nondispositive Matters under Rule 72(a), Federal Rules of Civil Procedure.**

(1) Unless otherwise ordered by a district judge:

[A] not later than fifteen (15) days after the objection is filed, the objecting party must serve and file a brief;

[B] not later than fifteen (15) days after service of the objecting party's brief, the opposing party must file an opposing brief; and

[C] the objecting party may serve and file a reply brief within five (5) days after service of the opposing party's brief.

(2) Unless leave of court is obtained, for good cause shown:

[A] objections are limited to those matters fairly presented to or raised before the magistrate judge; and

[B] new matters or issues may not be raised for the first time in an objection to the decision of a magistrate judge.

(3) Preparation of briefs is governed by D. Ak.LR 5.1.

(4) Unless otherwise ordered, forty (40) days after the objection is filed if a hearing is deemed required it will be set for hearing by the court.

### **(b) Dispositive Motions and Prisoner Petitions under Rule 72(b), Federal Rules of Civil Procedure.**

(1) Unless otherwise ordered by the district judge, no briefs, other than the objection and reply provided in Rule 72(b), Federal Rules of Civil Procedure, will be permitted.

(2) The court may, on its own motion or the motion of any party, set the matter for a further evidentiary hearing either before the district court or it may remand the matter to the magistrate judge to take such further evidence as the district judge may deem necessary.

(3) A party requesting a further evidentiary hearing must serve and file a motion not later than seven (7) days after the transcript of the record is certified, which motion must:

[A] describe the nature of the evidence to be proffered and its relevance to the specific objections; and

[B] contain a statement of the reason the proffered evidence could not be presented to the magistrate judge.

#### Related Provisions:

F.R.Civ.P. 72

Magistrate Judges; Pretrial Orders

D.Ak.LR 10.1

Form of Pleadings and Other Papers

## **Rule 6. Objections to Matters under 28 U.S.C. § 636(b)(1) in Criminal Cases**

### **(a) Objections and Replies.** Unless otherwise ordered:

(1) an objection to non-dispositive orders entered under 28 U.S.C. § 636(b)(1)(A) or initial findings and recommendations entered under 28 U.S.C. § 636(b)(1)(B) must be filed within the time specified in Federal Rule of Criminal Procedure 59;

(2) any reply to the objection must be filed within five (5) days after any objection is filed; and

(3) no briefs, other than the objection and reply will be permitted.

### **(b) Initial Review by Magistrate Judge.** Unless otherwise ordered, an objection to a dispositive matter referred under §636(b)(1)(B) will be routed to the magistrate judge who:

(1) will promptly examine the pleadings and documents related to the objection;

(2) may—

[A] conduct such further hearings as deemed necessary, and

[B] make additional, supplemental or substitute findings and recommendations; and

- (3) will, when the action deemed appropriate has been taken—  
[A] forward final findings and recommendations to the district judge, and  
[B] mail a copy to the parties.

**(c) Review by District Judge.**

- (1) Unless leave of court is obtained, for good cause shown:  
[A] objections are limited to those matters fairly presented to or raised before the magistrate judge; and  
[B] new matters or issues may not be raised for the first time in an objection to the findings and recommendations of a magistrate judge.
- (2) The court may, on its own motion or the motion of any party, set the matter for a further evidentiary hearing before the district judge or it may remand the matter to the magistrate judge to take such further evidence as the district judge may deem necessary.
- (3) A party requesting a further evidentiary hearing must serve and file a motion not later than three (3) days after the transcript of the record is certified, which motion must:  
[A] describe the nature of the evidence to be proffered and its relevance to the specific objections; and  
[B] contain a statement of the reason the proffered evidence could not be presented to the magistrate judge.

Related Provisions:

28 U.S.C. § 636	Jurisdiction, powers, and temporary assignment
F.R.Cr.P. 59	Matters Before a Magistrate Judge
D.Ak.LR 10.1	Form of Pleadings and Other Papers
D.Ak.LMR 3	Criminal Matters Routinely Assigned to Magistrate Judges

**Rule 7 Trial by Consent**

Upon the written consent of all parties to the matter as provided in Rule 73, Federal Rules of Civil Procedure, magistrate judges in this district are authorized to exercise the authority provided by 28 U.S.C. § 636(c).

Related Provisions:

28 U.S.C. § 636	Jurisdiction, powers and temporary assignments
F.R.Civ.P. 73	Magistrate Judges; Trial by Consent and Appeal Options
D.Ak. LMR 2	Authority of Magistrate Judges.